IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.W.P.No.19448-CAT of 2001

Date of Decision : May , 2007

Hardev Singh
(through legal heirs impleaded
vide order dated 04.04.2007)

i) Smt.Harjit Kaur (widow)
ii) Dr.Sarabjit Kaur (daughter)
iii) Dr.Gurpreet Singh (son)
iv) Gursonika Binepal (daughter) .... Petitioners

Vs.

Union of India and others .... Respondents

CORAM : HON'BLE MR.JUSTICE J.S.KHEHAR.
HON'BLE MR.JUSTICE L.N.MITTAL.

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Present : Mr.C.S.Pasricha, Advocate
for the petitioners.

Mr.D.R.Sharma, Advocate
for the respondents.

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L.N.MITTAL, J. :

Petitioner Hardev Singh (since deceased and now represented by his legal heirs) was inducted into service of respondents on 09.11.1962 as Superintendent, Building and Roads (Grade-I), a non-gazetted post. He was promoted on 29.01.1969 as Superintendent (B & R) Grade-I (Charge holder), also a non-gazetted post. The petitioner was eventually promoted as AEE Class-I (a gazetted post) on 10.02.1969.

Government issued instructions dated 04.02.1969, granting

three advance increments with effect from 01.12.1968 to non-gazetted employees, having engineering degree. Petitioner was accordingly granted benefit of the said three increments. However, arrears thereof were allegedly not paid to him.

The petitioner continued to pursue the matter of arrears of three advance increments with the respondents. Having been unsuccessful therein, he filed Original Applicatoin (OA) No.1523/CH/92 before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as `the Tribunal'). The said OA was, however, dismissed by the Tribunal on 01.02.2001, in the absence of petitioner's counsel. The petitioner thereafter filed Miscellaneous Applications (MAs) before the Tribunal seeking review of its order dated 01.02.2001. However, the said applications were dismissed by the Tribunal on 24.08.2001. Feeling aggrieved, the petitioner filed the instant writ petition seeking arrears of pay by grant of three advance increments, after quashing the aforesaid orders of the Tribunal.

It is not a matter of dispute that the petitioner was serving in a non-gazetted technical grade, as referred to in Government instructions dated 04.02.1969 (Annexure P-3). It is also not a matter of dispute that the petitioner possessed engineering degree, as required by the said instructions. It was the vehement contention of the learned counsel for the petitioner that the petitioner was consequently entitled to the benefit of three advance increments, in pursuance of the aforesaid instructions.

Counsel for the respondents, however, raised two-fold contentions. It was firstly urged that essential qualification for the post of Superintendent Grade-I, at the time of recruitment of the petitioner, was degree in engineering and consequently the benefit of said degree of engineering, which was essential qualification for the post of Superintendent Grade-I, at the time of petitioner's induction into service, cannot be granted to the petitioner under Government instructions dated

04.02.1969. This contention of the learned counsel for respondents, however, does not find favour with us.

Government subsequently issued instructions dated 02.06.1971 (Annexure CMA-I) whereby it was provided that the benefit of Government instructions dated 04.02.1969 would also be available to those persons who possessed the prescribed qualifications even at the time of their entry in Government service, in non-gazetted technical grade. The petitioner possessed the said qualification at the time of his entry into Government service in non-gazetted technical grade. Consequently, he cannot be denied the benefit of said instructions dated 04.02.1969, merely on account of the fact that the said qualification was also essential qualification for induction into service as Superintendent Grade-I at that time. Subsequently, engineering degree was no longer an essential qualification for the said post. In other words, persons who were subsequently inducted into service as Superintendent Grade-I, without there being essential qualification of engineering degree for the same, were admittedly granted the benefit of Government instructions dated 04.02.1969. In view of the same, the said benefit could not be denied to the petitioner, merely because engineering degree was an essential qualification for the post of Superintendent Grade-I at the time, when the petitioner was inducted into service. No such classification can legitimately be made between those who were inducted on the same post when engineering degree was an essential qualification and those who were inducted into service when engineering degree was no longer an essential qualification for the post. Thus, the claim of the petitioner could not be negated on the basis of the aforesaid contention raised by the learned counsel for the respondents. In fact, the respondents granted the said benefit to the petitioner and even paid him arrears of pay with effect from 01.12.1968 till 09.02.1969. Thus, the benefit of Government instructions dated 04.02.1969 was not denied to the petitioner on the basis of aforesaid argument of learned counsel for the respondents.

Learned counsel for the respondents, secondly argued that the petitioner was recruited as AEE Class-I (gazetted post) by way of a competitive examination and not by way of promotion and for this reason, the petitioner, after his recruitment as AEE Class-I, is not entitled to the benefit of three advance increments under Government instructions dated 04.02.1969. There is considerable merit in this argument. It is not a matter of dispute that the petitioner was appointed as AEE, as a result of competitive examination, conducted by Union Public Service Commission (UPSC) and thus, he was directly recruited to the said post. His appointment to the said post was not by way of promotion. Consequently, it is direct recruitment into Class-I service, with effect from 10.02.1969 and he became disentitled to the benefit of three advance increments under Government instructions dated 04.02.1969. It is not a matter of dispute and in fact, it is borne out from petitioner's own pleadings and documents that he has already been paid the benefit of three advance increments, for the period from 01.12.1968 till 10.02.1969. The petitioner has claimed the said benefit beyond 10.02.1969, but in view of his direct recruitment to Class-I service, with effect from 10.02.1969, the petitioner became disentitled to the said benefit and so, the said benefit has rightly been denied to him.

For the reasons recorded herein above, we find no merit in this writ petition and the same is accordingly dismissed.

(L.N.MITTAL)
JUDGE

May , 2007
monika

(J.S.KHEHAR)
JUDGE